

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

July 29, 1999

IN RE:)	
)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	DOCKET NO. 99-00391
TARIFF TO IMPLEMENT A \$0.29)	
DIRECTORY ASSISTANCE CHARGE)	

**ORDER APPROVING TARIFF AND DENYING
CONSUMER ADVOCATE'S PETITION**

This matter came before the Tennessee Regulatory Authority ("Authority") for consideration of BellSouth Telecommunications, Inc.'s ("BellSouth") tariff for implementation of intrastate directory assistance charges. BellSouth filed Tariff No. 99-00391 on June 1, 1999, with a proposed effective date of July 1, 1999. On June 15, 1999, the Consumer Advocate Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition for Declaratory Order, Complaint and Petition for Injunctive Relief* ("Petition"). The Directors of the Authority first considered the tariff at a regularly scheduled Authority Conference held on June 22, 1999, and due to the Consumer Advocate's Petition they unanimously suspended the tariff for thirty (30) days. BellSouth was instructed to and did file a Response to the Petition on June 22, 1999. The Consumer Advocate filed a Reply on June 29, 1999.

The Directors next considered this matter at a regularly scheduled Authority Conference held on July 27, 1999, and after hearing comments from the parties, and due to certain concerns raised at the Conference, they deferred action to enable BellSouth to modify certain provisions.

At a special Authority Conference held on July 28, 1999, the Directors considered the tariff as amended and a majority¹ voted to approve it.

This tariff would increase the rates for intrastate directory assistance from zero to 29¢ per call, subject to an allowance of six (6) calls at no charge per monthly billing cycle. As originally filed, the tariff contained exemptions from directory assistance charges for customers certified to be disabled as well as customers certified to be 65 years of age or older. In response to concerns by the Authority, BellSouth subsequently amended the filed tariff to extend the exemptions to disabled individuals, or individuals 65 years or older who may not be a BellSouth subscriber, but live at a subscriber's residence on a permanent basis.²

In its Petition, the Consumer Advocate asked the Authority to issue a declaratory order stating that directory assistance constitutes a basic service for price regulation purposes, and that BellSouth is precluded from instituting its tariff pursuant to a settlement agreement entered into with the Consumer Advocate in 1995. The Consumer Advocate also requested that the Authority enjoin BellSouth from placing its Directory Assistance tariff in effect.

Based on the entire record in this case, the Authority makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Tennessee Code Annotated § 4-5-223 permits an affected person to petition the agency for a declaratory order "as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency." The agency has the discretion to either convene a contested

¹ Director Kyle did not vote with the majority.

² While BellSouth amended this tariff to address the aforementioned concerns, the tariff does not address any situation where Directory Assistance provides a consumer with a wrong number, either as one of the initial non-charged 6 requests, or any subsequent charged request. BellSouth may determine that it would be both appropriate and prudent to revisit this tariff and amend it in such a manner as to provide subscribers with notice of the procedure to rectify any such misinformation provided by Directory Assistance.

case proceeding or refuse to issue a declaratory order, which is even conceded by the Consumer Advocate.

The Authority finds that there is no basis for issuing the declaratory order requested by the Consumer Advocate in this case. The classification of BellSouth's tariff to implement a charge for directory assistance as a "non-basic service"³ is consistent with Tenn. Code Ann. § 65-5-208(a)(1) as previously ruled upon by a majority of the Directors in *United Telephone-Southeast, Inc. Tariff No. 96-201, To Reflect Annual Price Cap Adjustment*, Docket No. 96-01423 (September 4, 1997).⁴ In that case, the Authority rejected the argument that the Consumer Advocate raises here that directory assistance is a basic service under the term "usage" as found in Tennessee Code Annotated § 65-5-208(a)(1). BellSouth's directory assistance tariff is consistent with United's directory assistance tariff, which was approved by a majority of the Directors.

The Authority also finds that there is no basis to convene a contested case to consider the Consumer Advocate's complaint. First, the Consumer Advocate's arguments attack two decisions previously made by this Authority (*Application of BellSouth Telecommunications, Inc. for a Price Regulation Plan*, Docket No. 95-02614 and *United Telephone-Southeast, Inc. Tariff 96-201 to Reflect Annual Price Cap Adjustment*, Docket No. 96-01423). The Consumer Advocate previously litigated the same issues in both of those cases and those issues are presently before the Court of Appeals.

³ As such, pursuant to Tenn. Code Ann. § 65-5-209, rates for non-basic services are set as the company deems appropriate, provided they are not found to be discriminatory or anti-competitive, and are not subject to the four year price freeze required of basic services.

⁴ This case has been argued before the Court of Appeals and is currently pending a decision; no stay of the enforcement of the Authority's decision has been entered by the Court.

Second, the proposed settlement agreement upon which the Consumer Advocate's complaint is based was conditioned upon approval by the former Public Service Commission, as the Consumer Advocate acknowledged. Because the Commission never approved the proposed settlement agreement and because the Consumer Advocate did not preserve the docket containing the proposed settlement agreement after the Commission ceased to exist,⁵ the proposed settlement is not binding on either the Consumer Advocate or BellSouth. Further, the proposed settlement pre-dated the *Tennessee Telecommunications Competition Act of 1995*. Because the passage of that state law established what constitutes basic and non-basic services, it would supersede any pre-existing agreement or tariff that specified anything to the contrary.

After careful review of each paragraph, the Consumer Advocate's complaint simply fails to state a claim upon which relief can be granted. Even if the Authority accepted as true all relevant and material averments contained in the complaint, the Authority finds that such facts do not constitute a cause of action. Just as a trial court has the authority (pursuant to Tenn. R. Civ. Proc. 12.02(6)) to dismiss a complaint sua sponte in the absence of a motion to dismiss when the complaint fails to state a claim upon which relief may be granted, the Authority may determine from the face of a pleading whether it states a cause of action. Finally, the Authority has the discretion whether to convene a contested case to consider complaints filed with the agency, and here, the Authority declines to exercise such jurisdiction. *See Consumer Advocate Division, Office of the Attorney General v. Greer, et al*, 967 S.W. 2d 759 (TN, 1998).

BellSouth's tariff, as amended, contains the following conditions of its service:

1. No charge to residence or business subscribers for the first six (6) directory assistance calls per month requesting intrastate telephone numbers. An allowance of two (2) calls per request will also be permitted.

⁵ The Consumer Advocate failed to recommence P.S.C. Docket No. 94-02876 pursuant to the requirements set forth by the Authority in Administrative Order No. 1, entered July 18, 1996.

2. No intrastate directory assistance charges will be imposed upon subscribers from their residence or business telephone line who are unable to use a telephone directory due to a visual or physical disability which can be confirmed by a physician, appropriate group or agency.

3. Upon request by subscriber and verification of age, intrastate directory charges will not apply to residential subscribers sixty-five (65) years or older.

4. Upon request by subscriber and verification of age, visual or physical disability, intrastate directory charges will not apply to residential subscribers that have a person 65 years or older or have a person with a visual or physical disability permanently residing at the subscriber's residence.

5. The following preamble will be included on all calls to directory assistance through October 31, 1999:

"Beginning August 1, 1999, there will be a \$0.29 charge for directory assistance calls for listings within Tennessee after six free call allowances per month. If you need a telephone directory, please contact your local business office."

6. BellSouth will notify all customers of the implementation of the directory assistance charge via a bill insert in the August, 1999 bill.

The Authority finds that BellSouth's tariff, as amended, including the foregoing conditions of the service, complies with all applicable statutory requirements and previous decisions of the Authority.

IT IS THEREFORE ORDERED THAT:

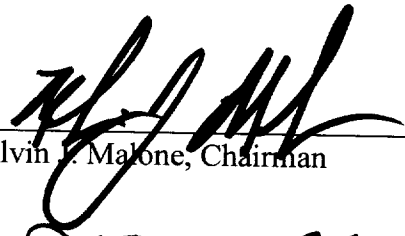
1. BellSouth's Directory Assistance tariff is hereby approved as amended, effective July 28, 1999;⁶

2. The Consumer Advocate's Petition is hereby denied;


3. Any party aggrieved with the Authority's decision in this matter may file a petition for reconsideration with the Authority within ten (10) days from and after the date of this order; and

⁶ BellSouth stated at the conference that it would not begin charging for directory assistance until August 1, 1999.

4. Any party aggrieved with the Authority's decision of this matter has the right to judicial review by filing a petition for review by the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this order.



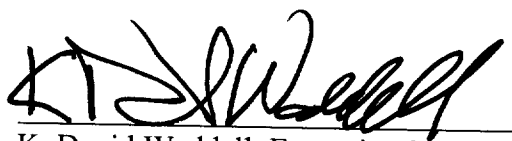
Melvin J. Malone, Chairman



H. Lynn Greer, Jr., Director

* * *
Sara Kyle, Director

ATTEST:



K. David Waddell, Executive Secretary

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* * * Consistent with her previously stated views on charges for directory assistance, Director Kyle did not vote with the majority in the approval of BellSouth's tariff or the denial of the Consumer Advocate's Petition.